

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Jason Andersen,

Defendant.

ORDER

Criminal No. 10-217 ADM/AJB

Nicole Lee Ndumele, Esq., and Betsy Biffl, Esq., United States Department of Justice, Civil Rights Division, Criminal Section, Washington, D.C., on behalf of Plaintiff.

Mark D. Larsen, Esq., Lindquist & Vennum, PLLP, Minneapolis, MN, on behalf of Defendant.

Defendant Jason Andersen (“Andersen”) has filed a Waiver of Right to Trial by Jury [Docket No. 110] pursuant to Rule 23(a) of the Federal Rules of Criminal Procedure. The Government consents to the waiver in its Response to Defendant’s Waiver of Jury Trial [Docket No. 122]. The issue presented is whether the Court will approve the waiver.

“If the defendant is entitled to a jury trial, the trial *must* be by jury unless: (1) the defendant waives a jury trial in writing; (2) the government consents; *and* (3) the court approves.” Fed. R. Crim. P. 23(a) (emphasis added). The duty of the Court to approve “is not to be discharged as a mere matter of rote.” Patton v. United States, 281 U.S. 253, 312 (1930), overruled on other grounds by Williams v. Florida, 399 U.S. 78, 92 (1970). “Trial by jury has been established by the Constitution as the ‘normal and . . . preferable mode of disposing of issues of fact in criminal cases.’” Singer v. United States, 380 U.S. 24, 35 (1965) (quoting Patton, 281 U.S. at 312).

Court approval is the third element required before a jury trial may be waived in a

criminal case. Fed. R. Crim. P. 23(a)(3). No reason has been asserted for waiver, and the Court cannot envision why Andersen cannot be accorded a fair trial before an impartial jury. The Court finds Andersen should have a trial by jury, the constitutionally preferred method of disposition of criminal cases.

Therefore, based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that the disposition of the above captioned case will be through trial by jury.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: November 10, 2010.